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4815-789
APR 23 2001

PORTLAND, OREGON

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

THE CITY OF EUGENE, a municipal corporation, by and through Eugene Water & Electric Board,

Petitioner,

v.

STATE OF OREGON, PUBLIC EMPLOYEES RETIREMENT BOARD,

Respondent,

and

KAREN JENKINS, DIANE DAVIDSON, ARLYN STEPPER, GARY GILLESPIE, ANN MONTAGUE, JUDITH ANN SUGNET, GARY NAUTA, and ROGER GARVER,

Intervenors.

CITY OF EUGENE, a municipal corporation,

Petitioner,

v.

STATE OF OREGON, PUBLIC EMPLOYEES RETIREMENT BOARD,

Respondent,

and

KAREN JENKINS, DIANE DAVIDSON, ARLYN STEPPER, GARY GILLESPIE, ANN MONTAGUE, JUDITH ANN SUGNET, GARY NAUTA, and ROGER GARVER,

Intervenors.

Case No. 99C-20235
Honorable Paul J. Lipscomb

RESPONDENTS/DEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PETITIONERS/PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Case No. 99C-12794

Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-6313

1 CITY OF EUGENE, LANE COUNTY,
2 MULTNOMAH COUNTY, CITY OF
3 PORTLAND, CITY OF ROSEBURG, CITY
4 OF HUNTINGTON, and CANBY UTILITY
5 BOARD, municipal corporations,

6 Petitioners/Plaintiffs,

7 v.

8 STATE OF OREGON, and STATE OF
9 OREGON by and through PUBLIC
10 EMPLOYEES RETIREMENT BOARD,

11 Respondents/Defendants,

12 and

13 KAREN JENKINS, DIANE DAVIDSON,
14 ARLYN STEPPER, GARY GILLESPIE,
15 ANN MONTAGUE, JUDITH ANN
16 SUGNET, GARY NAUTA, and ROGER
17 GARVER,

18 Intervenors.

19 ROGUE RIVER VALLEY IRRIGATION
20 DISTRICT, a municipal corporation,

21 Petitioner,

22 v.

23 STATE OF OREGON, PUBLIC
24 EMPLOYEES RETIREMENT BOARD,

25 Respondent.

Case No. 99C-12838

Case No. 00C16173

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CERTIFICATE OF SERVICE

I certify that on April 20, 2001, I served the foregoing RESPONDENTS/
DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO PETITIONERS/PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT upon the parties hereto by the method indicated below, and addressed
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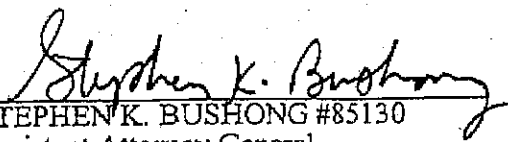
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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR MARION COUNTY

CITY OF EUGENE, a municipal corporation,

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STATE OF OREGON, PUBLIC EMPLOYEES RETIREMENT BOARD,

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KAREN JENKINS, DIANE DAVIDSON, ARLYN STEPPER, GARY GILLESPIE, ANN MONTAGUE, JUDITH ANN SUGNET, GARY NAUTA, and ROGER GARVER,

Intervenors.

Case No. 99C-12794
Honorable Paul J. Lipscomb

THIRD AMENDED PETITION FOR JUDICIAL REVIEW OF ORDERS IN OTHER THAN A CONTESTED CASE AND COMPLAINT FOR DECLARATORY AND MONETARY RELIEF

CITY OF EUGENE, LANE COUNTY, MULTNOMAH COUNTY, CITY OF PORTLAND, CITY OF ROSEBURG, CITY OF HUNTINGTON, and CANBY UTILITY BOARD, municipal corporations,

Petitioners/Plaintiffs,

v.

STATE OF OREGON, and STATE OF OREGON by and through PUBLIC EMPLOYEES RETIREMENT BOARD,

Respondents/Defendants,

and

KAREN JENKINS, DIANE DAVIDSON, ARLYN STEPPER, GARY GILLESPIE, ANN MONTAGUE, JUDITH ANN SUGNET, GARY NAUTA, and ROGER GARVER,

Intervenors.

Case No. 99C-12838
Honorable Paul J. Lipscomb

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1 above, incorporated herein. The Court should interpret the authorizing statutes and issue
 2 declarations consistent with the Counts as incorporated above.

3 **SEVENTH CLAIM FOR RELIEF**

4 **Administrative Mandamus under ORS 183.490**

5 266.

6 Petitioners reallege paragraphs 1 through 157 above.

7 267.

8 ORS 238.670(1) mandates creation and appropriate funding of a contingency reserve
 9 account to prevent deficits in pension accounts due to unforeseen contingencies.

10 268.

11 Since 1978, the Board has allocated no funds to the contingency reserve account.

12 269.

13 Petitioners City of Eugene and Lane County have asked the Board to fund the
 14 contingency reserve account. The Board has refused to fund such an account.

15 270.

16 This Court should use its authority under ORS 183.490 to order the Board to comply
 17 with the statutory mandate of ORS 238.670(1) and create, fund and use a contingency account
 18 for the purposes dictated by the statute.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Petitioners/Plaintiffs pray for a judgment in their favor against
 21 defendants on their claim for relief as follows:


- 22 1. On behalf of Lane County and the City of Eugene, reversal and remand of the Board's
 23 October 6, 1998 Order and the declarations sought above in relation to that Order.
 24 2. On behalf of Rogue River Valley Irrigation District, reversal and remand of the
 25 Board's May 19, 2000 Order and the declarations sought above in relation to that
 26 Order.

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- 1 3. On behalf of all Petitioners, reversal and remand of the Board's March 27, 2000 Order
- 2 and the declarations sought above in relation to that Order.
- 3 4. A declaratory judgment declaring the proper interpretation of the Board's authorizing
- 4 statutes and other limitations on its authority as set forth above in paragraph 259.
- 5 5. On behalf of all Petitioners, reversal and remand of the Board's December 12, 2000
- 6 Orders and the declarations sought above in relation to those Orders.
- 7 6. An order to the Board to create, fund and use a contingency account for the purposes
- 8 dictated by ORS 238.670(1).
- 9 7. For Plaintiffs/Petitioners' reasonable attorneys' fees, costs and disbursements; and
- 10 8. For such other and further relief as the court deems just and proper.

11 DATED this 4th September, 2002.

12 HARRANG LONG GARY RUDNICK P.C.

13
 14 By: 
 15 William F. Gary, OSB #77032
 16 Sharon A. Rudnick, OSB #83083
 17 Jerome Lidz, OSB #77263
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